IN THE HIGH COURT OF UTTARANCHAL AT NINITAL

Criminal Appeal No. 1016 of 2001.

(Old No. 451 of 1982)

J.S. Bist son of Shri Ranjit Singh, resident of Lanshdowne, District Pauri Garhwal.

…Appellant.

Versus

State.

…Respondent.

Mr. Raman Kumar Sah, Advocate, for the appellant.
Learned A.G.A. for the respondent.

Hon'ble Prafulla C. Pant, J.

1. This appeal, preferred under Section 374 (2) of Code of Criminal Procedure (for brevity hereinafter referred as Cr. P.C.) is directed against the judgment and order dated 21.01.1982 passed in criminal trial No. 1 of 1981 by learned Sessions Judge, Anti- Corruption, Dehradun, whereby appellant J.S.Bist has been convicted under section 409 of the Indian Penal Code, 1860, (for brevity hereinafter referred as I.P.C.) and under section 5(2) read with section 5(1) (c) of Prevention of Corruption Act, 1947 (for brevity hereinafter referred as P.C. Act.) The trial court has sentenced the appellant under section 409 IPC to undergo imprisonment for a period of one year, and under section 5(2) read with section 5(1) (c) of P.C. Act also, to undergo imprisonment for a period of one year.

2. Heard learned counsel for the parties and perused the entire record.

3. Prosecution story, in brief, is that in the year 1977 and 1978 appellant J.S. Bist worked as a cashier in the office of Director of Forest Education (for brevity hereinafter referred as D.F.E.), in Forest Research Institute, Dehradun. His job was to maintain the case book and he was entrusted with the money belonging to aforesaid office. While posted as cashier

between the period April, 1977 to November, 1978 Principal, Rangers College, Dehradun borrowed an amount of Rs. 3000/- from the office of D.F.E. which was sent to said college and an entry was made in cash book (Ext.A 21). The said amount was refunded by the Principal, Rangers College, Dehradun by a cheque (Ext.A1) dated 19.12.1977 but the same was not accounted for in the cash book. The appellant encashed the cheque and misappropriated the same.

4. The trial court, it appears that after giving necessary copies to the accused, framed charge of offence punishable under section 409 IPC and also that of offence punishable under section 5(2) read with section 5(1) © of P.C.Act, 1947 against the accused/appellant J.S. Bist who pleaded not guilty and claimed to be tried. In view of the denial of charge, on behalf of prosecution, PW 1 D.C.Pandey, D.F.E., PW 2 M.R. Bhandari, cashier of N.F.R.C., P.W. 3 M.S. Thapa, L.D.C. in the account section and P.W. 4 R.K. Bhakta, the Investigating Officer.

5. The oral and documentary evidence was put to the accused under section 313 of Cr.P.C., in reply to which the accused/appellant alleged that he acted under instructions of the D.F.E. He has further stated that he was not holding charge of cashier. In defence Dw. 1 B.C.Khanna, D.W. 2 P.L. Bali and D.W. 3 D.N. Ahuja were examined on behalf of the appellant before the trial court.

6. D.W.1 B.C. Khanna, head clerk, has stated that the appointment of accused/appellant as cashier was not approved by the D.P.C.. DW 2 P.L. Bali has stated that there is no approval of President of Forest Research Institute for appointment of cashier of the appellant made by Director, Forest Education. DW 3 D.N.Ahuja has stated that the D.F.E.

was reviewing authority of the confidential remarks given by the Superintendent to the accused/appellant.

7, P.W. 1 D. C.Pandey, Director Forest Education, has stated on oath that the accused/appellant was working as cashier in his office in the year 1977. This fact has been corroborated by PW 3 Lower Division Clerk in the same section in which the accused/appellant was working. PW 2 M.R. Bhandari, cashier of the Rangers College has proved that Rs. 3000/- was borrowed from the office of D.F.E and the necessary entry was made in the cash book (Ext.2). The prosecution witnesses have proved that the amount which was repaid to the office of D.F.E. by the Rangers College was not accounted for by the accused/appellant.

8. On behalf of the appellant it is argued that the sanction required under P.C.Act was accorded on 30.06.1980 while the First Information Report had already lodged on 07.04.1979. On the basis of it, it is further argued that the conviction of the appellant is bad in law. I do not see force in the argument of the learned counsel for the appellant, for the reason that sanction is required under the P.C. Act not for lodging of the FIR but for prosecution. Sanction has been found to have been given before prosecution. As such, there is no illegality in the conviction recorded by the trial court on this count.

9. Learned counsel for the appellant argued that he was not appointed regularly as cashier, as such, he can not be held liable for the alleged misappropriation. Assuming for a moment that the appointment of the accused/appellant as cashier was not approved by the President, F.R.I, still it is admitted fact that he was Upper Division Clerk in the account section, as such, he was a public servant within the meaning of Section 21 IPC. Whether he was Upper division Clerk or

cashier, has become irrelevant as once it has been proved by the prosecution that he received cheque of Rs. 3000/- and got it encashed but did not deposit the same in the cash of the office, the offence stands made out against the accused/appellant, as after entrusted amount has been misappropriated by him PW 1 D.C. Pandey has proved that the cheque (Ext.A1) dated 19.12.1977 issued by Rangers College was received by accused/appellant who made endorsement (Ext.A23) and received the payment. But the amount, after being withdrawn by the accused/appellant was misappropriated by him and not shown in the account.

10. Learned counsel for the appellant argued that considering the small amount of Rs. 3000/- the sentence awarded by the trial court is harsh. In the opinion of this Court, sentence of one year is the minimum sentence which could he been awarded under section 5(2) read with section 5(1) (c) of P.C. Act, 1947, and sentence of one year under section 409 IPC is to run concurrently, as such, the same can not be said to be harsh one.

11. For the reasons as discussed above I do not see any reason to interfere in the judgment and order a passed by the trial court. Therefore, the appellant is liable to be dismissed and the same is dismissed. The appellant is on bail. His bail is cancelled. The trial court shall take the appellant into custody to make him serve out the sentence awarded by the trial court.

(Prafulla C. Pant)

Dated: 09.10.2006.
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